



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

MAR 29 2013

OFFICE OF  
AIR AND RADIATION

Dear Chairman Upton:

Thank you for your letter dated February 7, 2013, co-signed by five of your colleagues, regarding the U.S. Environmental Protection Agency's administration of the Renewable Fuels Standard (RFS) program and Renewable Identification Number (RIN) fraud. We appreciate the Committee's questions and the agency has been actively following up on addressing your concerns.

The EPA is committed to meeting Congress's goals in establishing the RFS, as set forth in the statute. Since the Oversight and Investigations Subcommittee hearing on July 11, 2012, we have been diligently working on a rulemaking to make the RFS program more efficient and effective. To achieve that goal, the EPA met extensively with industry stakeholders, including biofuel producers, refiners, blenders, their trade associations, and potential third-party auditors, in order to consider the ideas of these parties into this rulemaking. This collaboration helped the EPA to develop a proposed Quality Assurance Plan program that is robust and comprehensive, taking into account the concerns and opinions of the many stakeholders. On February 21, 2013, the EPA published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* to establish a voluntary program for verifying the validity of RINs under the RFS program. The NPRM can be found at the following link: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-21/pdf/2013-03206.pdf>. We look forward to receiving and incorporating comments from industry stakeholders and the public to make the final rule even stronger and more robust.

The enclosure, prepared by EPA staff, provides answers to your specific questions regarding the RFS, the Quality Assurance Program, the associated RIN fraud, and the RIN market. We would also be happy to brief Committee staff on the proposed rulemaking.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", is positioned above the printed name.

Gina McCarthy  
Assistant Administrator

Enclosure



## ENCLOSURE

### EPA Responses to February 7, 2013, Letter

1. Please describe EPA's current efforts to reduce fraudulent or improper generation, registration, or retirement of RINs.
  - a. What specific fraudulent, improper, or otherwise problematic practices is EPA examining?
  - b. What solutions has EPA implemented or does EPA plan to implement to address these practices, and what is the schedule for implementation?

As the Committee is aware, the EPA has investigated and pursued criminal charges against several producers of fraudulent RINs. The use of invalid RINs would undermine the volume requirements established by Congress, and the EPA's Office of Enforcement and Compliance Assurance and the Office of Air and Radiation are working together to address issues regarding fraudulent RINs. At the same time, the EPA understands the concerns of obligated parties who, in good faith, acquire RINs that turn out to be invalid.

On February 21, 2013, the EPA published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*, which details a voluntary program geared towards providing a more structured way to verify the validity of Renewable Identification Numbers (RINs) under the RFS program. The proposed program includes elements to allow verification of RINs to occur from the beginning of 2013. The NPRM can be found at the following link: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-21/pdf/2013-03206.pdf>.

The proposal provides a means for independent third-parties to audit the production of renewable fuel and verify that RINs have been validly generated. The basis for these audits would be the EPA-approved Quality Assurance Plans (QAPs), which would be developed and implemented by independent third-parties, based on minimum requirements. A QAP would give confidence that an individual RIN was validly generated through actions such as verifying the type of feedstock used to produce the renewable fuel and verifying the volume of fuel produced. For RINs that have been verified according to an EPA-approved QAP, the proposed program would provide an affirmative defense against civil liability for the transfer or use of invalidly generated RINs, and would specify both the conditions under which invalid RINs must be replaced with valid RINs, and by whom. The EPA expects this program to increase confidence in the validity of RINs, which will increase market liquidity in the transfer and use of RINs, especially for small producers. Additionally, the agency is proposing to address issues related to the export of renewable fuel, as exports have become more prevalent in the transportation fuel market. The proposed changes address how RINs should be handled when renewable fuel is exported and will provide the EPA with more data to track renewable fuel exports. The intent is to ensure that exported renewable fuel is not used to comply with the mandated domestic annual renewable fuel volume requirement.

Notwithstanding the issuance of this proposal, the EPA is continuing its investigations related to improper and fraudulently generated RINs.



2. *What is EPA's assessment of the impact of its initiatives, proposals, or policy changes on reducing fraud and abuse in the RFS program?*

- a. *Please provide all analyses and memoranda relating to EPA assessments of the impact or effectiveness of its actions on fraud and abuse in the RFS program and the integrity of the RIN market.*

The primary impacts of the QAP are expected to be improved confidence in today's RIN market and improved opportunities for smaller renewable fuel producers to sell their RINs. The proposed QAP is expected to reduce the incidence of invalidly generated RINs entering the market, which will help to ensure that valid RINs are traded and used for compliance. If RINs are invalidly generated, this program will provide reasonable assurance of replacement of those RINs. As a result, it is expected to help ensure that the renewable fuel volumes mandated by Congress are met. With greater confidence in both the validity of RINs and the protection against civil liability that an affirmative defense affords, we expect there to be less of a disparity in value between RINs generated by large and small renewable fuel producers. We expect renewed market liquidity and certainty. Likewise, the proposed changes to the regulations governing the export of renewable fuel are expected to ensure that the appropriate number and type of RINs are retired for every gallon of renewable fuel exported, consistent with the intent of the program.

3. *Please describe EPA's efforts to identify the factors surrounding the dramatic decline in RIN prices since July 2012, particularly as these bear on the integrity of the RIN market and as they are potential indicators of fraud and abuse.*

- a. *What analysis has EPA conducted to identify the continuing viability of participants in the RIN market, including small biodiesel producers?*
- b. *Please provide all such analyses and memoranda relating to pricing trends in the RIN market.*

The EPA has not conducted a detailed econometric analysis of RIN prices. The agency's understanding is that the commonly held belief in the biofuel industry is that RIN prices fell when it became obvious that 2012 biodiesel production would exceed the 2012 RFS mandate of 1 billion gallons.

4. *Please describe how EPA plans to implement its proposed Quality Assurance Program.*

We recognize that RIN generators and buyers want to know whether 2013 RINs generated and audited prior to the effective date of the final rule would receive the proposed benefits and treatment given to RINs verified after the rule is in effect. To that end, the EPA will facilitate the verification of RINs generated in 2013 prior to the final rule's effective date through an informal "pre-registration" process. The EPA is currently reviewing auditors' registration information and initial QAP submissions, and will provide guidance on whether the plans appear to satisfy the proposed requirements. The names of those auditors and QAPs whose submissions are consistent with the applicable requirements in the proposed regulations will be published on the EPA's website. This will not signify a final agency decision or approval of any auditor or QAP, and the EPA will not be legally bound by this initial evaluation. It would instead be guidance to an auditor as to whether the EPA has any concerns about its registration and QAP plan and whether they appear to be consistent with the requirements in the proposed regulations.

Once the final rule is in effect, the EPA will proceed to register auditors and approve QAPs. Upon receiving such registration and approval, auditors will be able to issue verifications for RINs generated prior to issuance of the final rule that were reviewed according to the QAP approved under the terms of the final rule. Once these RINs generated prior to the effective date of the final rule have been verified, they will be treated like all other verified RINs.

The EPA also issued a Second Interim Enforcement Response Policy (Second IERP) in order to encourage early implementation of independent third-party QAPs. In view of the NPRM proposal for a retrospective affirmative defense for parties who transfer or use invalid RINs that were verified by a QAP, the Second IERP states that the EPA generally does not intend to initiate civil enforcement actions during the 2013 calendar year against parties who transfer or use invalid 2013 RINs verified prior to publication of the final rule, provided that the parties meet certain conditions. Please see the following link for the Second IERP:

<http://www.epa.gov/enforcement/documents/policies/erp/secondierp013113.pdf>.